

ENNHRI input to European Commission's Communication: 'Opening a debate to strengthen the rule of law in the EU'

NHRIs' contribute to Rule of law, democracy and fundamental rights in the EU

The European Network of National Human Rights Institutions (ENNHRI) is a network of 44 European National Human Rights Institutions (NHRIs) and covers 26 out of 28 EU Member States.¹

NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote fundamental rights at the national level. They are established and function with reference to the UN Paris Principles which sets forth that NHRIs must carry out their work independently of political considerations and promote respect for fundamental rights, democratic principles and rule of law in all circumstances, including in situations of state of emergency. It is unique to NHRIs that their independence, pluralism and effectiveness is periodically assessed. They receive international accreditation, ensuring their accountability and positioning them as interlocutors on the ground speaking up in defence of rule of law, democracy and fundamental rights in a variety of national contexts.

Since 2018, ENNHRI's member NHRIs have prioritised contributing to democracy, fundamental rights and rule of law as one of the three key thematic priorities for regional cooperation through ENNHRI. [ENNHRI's Regional Action Plan](#) on 'the role of NHRIs in promoting and protecting Human Rights Defenders (HRDs) and enabling democratic space' contains key actions NHRIs and ENNHRI aim to implement with a view to prevent the undermining of democratic space as well as to react effectively when democracy and human rights defenders are under threat. Through its interventions, ENNHRI contributes to legislative and policy developments at the regional level and enables follow-up actions at national level. The Council of Europe Committee of Ministers' [Recommendation on civil society space](#), for example, recognizes NHRIs as promoters and protectors of civil society space. At the EU level, ENNHRI is mentioned in the ongoing development of the [Democracy, Rule of Law and Fundamental Rights mechanism](#) (DRF), at the European Parliament, as possibly involved in the DRF Expert Panel. ENNHRI is also engaging with the European Commission on how NHRIs can meaningfully contribute to rule of law aspects of the EU enlargement negotiations and the European Neighbourhood Policy.

¹ As no NHRI exists in Malta or Italy, ENNHRI does not have a member in those two EU Member States. ENNHRI is supporting the establishment of an NHRI in compliance with the Paris Principles in both EU Member States.

With this contribution to the European Commission's Communication, ENNHRI aims to show that NHRIs can be structurally considered as partners in the context of the EU's Rule of Law Framework, including for better promotion, early prevention and the provision of tailored responses. ENNHRI provides nine recommendations to the European Commission which are further fleshed out in the corpus of the text:

In relation to promotion of the rule of law:

1. NHRIs and the European Commission can cooperate on further promoting knowledge of the EU rule of law standards and case law at national level.
2. The European Commission can support NHRIs when working to ensure that legislation and policies are implemented at national level in a manner which respects and enables the promotion of rule of law, democracy and fundamental rights.
3. The European Commission can support ENNHRI to provide a forum to further foster capacity for NHRIs to promote rule of law, democracy and fundamental rights at national level.

In relation to early prevention:

4. NHRI annual reports and special thematic reports provide key resources to assess early warning trends concerning the situation of democracy, rule of law and fundamental rights in EU countries and should be taken into account by the European Commission.
5. NHRI impact assessments of and interventions on policies and laws should be considered by the European Commission when assessing *systemic* threats to rule of law, democracy and fundamental rights in EU Member States.
6. NHRIs contribute to the judicial enforcement of democracy, fundamental rights and rule of law at national and regional level and information related to individual complaints and strategic litigation from NHRIs, including participation in preliminary reference (Article 267 TFEU) before national courts as regard the rule of law, should be taken into account by the European Commission.
7. ENNHRI and the European Commission can foster closer cooperation on data collection and information exchange, contributing to early prevention of threats to rule of law, democracy and fundamental rights.

In relation to the provision of tailored responses:

8. The European Commission can systemically consider NHRIs as national counterparts to ensure tailored responses taken in the context of the protection of the rule of law.
9. The European Commission should consider support to NHRIs under threat as part of its actions and recommendations formulated towards Member States in the context of the EU Rule of Law Framework.

Better connecting NHRIs and the EU Rule of Law Framework

Better Promotion

1. NHRIs and the European Commission can cooperate on further promoting knowledge of the EU rule of law standards and case law at national level.

NHRIs are mandated by law to promote fundamental rights at national level and bridge regional standards and jurisprudence with national contexts. NHRIs provide training and undertake awareness-raising activities targeted at state authorities, civil society and the general public, and are thereby uniquely placed to prevent systemic threats to rule of law and democracy in EU Member States and to promote a culture of rights. NHRIs and ENNHRI, for example, cooperate with EU Agency for Fundamental Rights (FRA) to provide training to varied national audiences on the EU Charter of Fundamental Rights, including to judges, lawyers, civil society organisations and civil servants. Such training has been lately organised i.a. in Croatia and Poland. NHRIs also provide and support formal and informal human rights education of the youth, including through advocating for the integration of human rights education in school curricula, as has been achieved in Denmark and Finland after advocacy of the NHRIs concerned. NHRIs are also investing in informing the public of regional and global case-law and recommendations and to clarify their relevance to people's daily lives. The NHRI of Great Britain, for example, is developing an online platform which provides information on the national implementation of international recommendations in a format and language that is targeted at the broad public.

2. The European Commission can support NHRIs when working to ensure that legislation and policies are implemented at national level which respect and enable the promotion of rule of law, democracy and fundamental rights.

NHRIs work to ensure that legislation and policies are in place at national level which provide a free space for varied opinions and public debate. NHRIs promote fundamental rights including freedom of speech and assembly, and they address instances where such rights that are fundamental to democracy and rule of law are not respected. NHRIs, for example, address hate speech (including of public authorities and private actors) and monitor and report whether rights are respected during public demonstrations. The French NHRI, for example, called upon government authorities to respect fundamental rights in the context of the 'yellow jacket demonstrations' and shared their findings and ongoing concerns with the Council of Europe Commissioner for Human Rights who followed-up the situation.²

3. The European Commission can support ENNHRI to provide a forum to further foster capacity for NHRIs to promote rule of law, democracy and fundamental rights at national level.

² <https://www.cncdh.fr/fr/actualite/gilets-jaunes-la-cncdh-rencontre-la-commissaire-aux-droits-de-lhomme>.

While NHRIs' work practices are tailored to national contexts, ENNHRI provides a platform for knowledge exchange and capacity-building among European NHRIs. ENNHRI pools expertise from across its members, including on communication through a communication working group, and organises capacity building and peer exchange on impactful human rights communication for NHRIs, based on fact-based positive messages. ENNHRI also builds awareness and expertise of NHRIs to contribute to the national implementation of regional standards. ENNHRI, for example organises training for NHRIs on implementation of judgements of the European Court of Human Rights and provides guidance for NHRIs on how to engage in the procedures of the Court of Justice of the EU. In line with its Regional Action Plan on Promoting and Protecting HRDs and Democratic Space, ENNHRI also aims to further enhance awareness of NHRIs concerning regional rule of law mechanisms.

Early prevention

4. NHRI annual reports and special thematic reports provide key resources to assess early warning trends concerning the situation of democracy, rule of law and fundamental rights in EU countries and should be taken into account by the European Commission.

A central function of all NHRIs is to monitor and report about the situation of fundamental rights in their country. NHRIs thereby constitute key sources of information on national developments which may indicate an evolution towards systemic threats to rule of law, democracy and fundamental rights in EU Member States. The Paris Principles require NHRIs to annually report and discuss the situation of human rights with the national parliament. They follow-up the implementation of their recommendations with relevant state authorities, including through generating public debate and making use of the media and cooperation with civil society organisations. Increasingly, NHRIs include specific chapters in their annual reports dedicated to the rule of law, or publish special reports on rule of law issues, as is done, for example, by the Polish NHRI³.

5. NHRI impact assessments of and interventions on policies and laws should be considered by the European Commission when assessing *systemic* threats to rule of law, democracy and fundamental rights in EU Member States.

NHRIs' broad mandates allow them to intervene in legislative and policy-making processes and to undertake impact assessments with a view to prevent that policies or laws would have a negative impact on fundamental rights, democracy and rule of law. Some NHRIs have a mandate to intervene before the constitutional court or administrative courts to challenge adopted national and/or regional policies and laws. In Belgium and France, for example, the NHRIs warned the

³ Report "Rule of law is for the people":
https://www.rpo.gov.pl/sites/default/files/biala_ksiega_RPO_praworzadnosc_jest_dla_ludzi.pdf

government and the public of the negative human rights implications of the government's security measures after the terrorist attacks in these countries. The Polish NHRI intervened before the constitutional court to challenge various legislative initiatives negatively impacting fundamental rights.

6. NHRIs contribute to the judicial enforcement of democracy, fundamental rights and rule of law at national and regional level and information related to individual complaints and strategic litigation from NHRIs should be taken into account by the European Commission. NHRIs function as access points for individuals to voice their human rights concerns and all NHRIs provide information to individuals about redress for human rights violations. As documented in its annual report, the largest amount of individual complaints registered by the NHRI in Romania in 2017, for example, related to access to justice issues. When domestic remedies are exhausted, the Romanian NHRI advises individuals on sending a petition to the European Court of Human Rights. Some NHRIs have an individual complaints-handling mandate or undertake strategic litigation before national and regional courts. The Irish NHRI, for example, applied to intervene as *amicus curiae* before the Irish constitutional court in the *Celmer* case which was eventually referred to the Court of Justice of the EU.

7. ENNHRI and the European Commission can foster closer cooperation on data collection and information exchange, contributing to early prevention of threats to rule of law, democracy and fundamental rights.

As part of its Regional Action Plan on Promoting and Protecting HRDs and Democratic Space, ENNHRI aims to develop regional approaches to NHRI data- collection concerning threats to human rights defenders, rule of law and democratic space which could facilitate action to prevent systemic deterioration. ENNHRI will also step up its work on linking up NHRIs with regional actors and mechanisms and will aim to forge new partnerships, including with HRD networks. ENNHRI cooperates with FRA and a number of its members are participating in the Agency's Management Board. This ensures complementarity and creates synergies on fundamental rights data collection in the EU.

Tailored response

8. The European Commission can systemically consider NHRIs as national counterparts to ensure tailored responses taken in the context of the protection of the rule of law. NHRIs function as permanent and independent public institutions that bridge local contexts with relevant regional and international human rights standards and procedures. Because of their national embeddedness and close cooperation with a wide variety of grassroots organisations, individuals and state authorities, NHRIs constitute valuable counterparts for a wide variety of global and regional actors when assessing the most appropriate responses to national human rights challenges and follow-up to recommendations and judgements. The European Commission can systemically consider NHRIs as counterparts in the context of the different stages of the Rule of Law Framework, including the assessment stage, the

recommendation stage, and the follow-up of the Commission's recommendations. An initial example of cooperation between the Commission and an EU NHRI in the context of the Rule of Law Framework has been provided in the Polish context. As reflected in the European Commission's proposal on Article 7 of the TEU regarding the Rule of Law in Poland on 20 December 2017, the Polish NHRI provided ample information on the national context and contributed to the assessment of the Commission to identify a clear risk of a serious breach by the Republic of Poland of the rule of law, triggering the application of article 7 TEU⁴.

9. The European Commission should consider support to NHRIs under threat as part of its actions and recommendations formulated towards Member States in the context of the EU Rule of Law Framework.

When fundamental rights, democracy and rule of law is being undermined in EU member states, this generally has a negative impact on NHRIs as well. NHRIs and their staff, like other human rights defenders, often face challenges and threats at the individual and institutional levels in the course of their work. Threats to NHRIs may come in different shapes, including also through the introduction of changes to the NHRI constituting law which limit an NHRI's mandate or undermine its independence or limitation of the budget affecting negatively capacities to protect fundamental rights. ENNHRI is cooperating with FRA on their research on the situation of NHRIs across EU Member States and this study will include information on barriers and threats NHRIs in EU Member States face to carry out their mandate in an independent and effective manner. ENNHRI provides tailored and carefully assessed support to NHRIs under threat, through its [Guidance](#), and cooperates with regional partners when doing so, including OHCHR, the Council of Europe and OSCE ODIHR. When the Polish NHRI has been facing threats, ENNHRI has released a [joint statement](#) with regional actors in support of the Polish NHRI and also undertook an in-country mission together with regional partners. The upcoming FRA research on NHRIs will also be relevant when considering targeted support to NHRIs in the future.



⁴ This role of NHRIs and ENNHRI is also recognised in the context of the proposed enabling conditions for the next generation of the European Structural and Investment Funds, as well as the possible role of NHRIs as provider of relevant information and insights in the context of the proposed Regulation for the Protection of the Union's budget (MFF) in case of Generalised Deficiencies (COM(2018)324) as regards the Rule of Law in Member States, echoed in the respective European Parliament report proposing to establish a Panel of independent Experts that includes ENNHRI.